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D. J. R. R. R.  
DISTRICT CLERK  
GALVESTON COUNTY, TEXAS

COUNTY OF GALVESTON

*District Courts  
County Courts at Law*

***Amended***

*Texas Fair Defense Act - Galveston County Plan  
Effective January 01, 2003*

*Amended: 05/31/2005*

*Amended: 01/17/2006*

*Amended: 10/01/2007*

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GALVESTON COUNTY, TEXAS

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**GALVESTON COUNTY PLAN INCLUDING STANDING RULES AND ORDERS  
FOR PROCEDURES FOR TIMELY AND FAIR APPOINTMENT OF COUNSEL  
FOR INDIGENT ACCUSED PERSONS IN GALVESTON COUNTY, TEXAS,  
PURSUANT TO THE TEXAS FAIR DEFENSE ACT.**

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**EFFECTIVE DATE - JANUARY 01, 2003**

Be it remembered that on this date the below signed County Court at Law Judges and District Court Judges for Galveston County, Texas hereby adopts, orders, establishes and orders published these county wide procedures, rules and orders for the timely and fair appointment of counsel for indigent accused persons in Galveston County, Texas. This document is the Galveston County Plan in conformance with the requirements of the Texas Fair Defense Act.

**I.**

**ARRESTING OFFICER'S RESPONSIBILITY**

**MONDAY THROUGH FRIDAY**

It will be the **responsibility of the arresting agency** to complete the following when an individual is arrested without a warrant:

1. ensure that a Determination of Probable Cause is made by a magistrate by the twenty-fourth (24<sup>th</sup>) hour in misdemeanor cases and by the forty-eighth (48<sup>th</sup>) hour in felony cases;
2. ensure that the defendant is brought before a Magistrate within forty-eight (48) hours of the defendant's arrest. This includes both misdemeanor and felony arrests without a warrant;
3. ensure that a magistrate determines whether the defendant requests the appointment of counsel or waives the appointment of counsel.

**HOLIDAYS AND WEEKENDS**

Weekend hours begin 12:01 a.m. Saturday and end 12 o'clock midnight on Sunday. Holiday weekends are extended to include the official County holiday.

The County will provide a magistrate on official County holidays and weekends. The magistrate will give Magistrate Warnings and make determinations on probable cause.

In order for the arresting agency to take advantage of this service, the agency must:

1. book the defendant into the County Jail within eight (8) hours of the defendant's arrest; and

2. provide the County Jail with the proper paperwork, which includes:
  - a. "Peace Officers Request for Magistrate's Probable Cause Finding";
  - b. "Sworn Probable Cause Affidavit";
  - c. copy of the offense report and any available supplements and statements. A "DA Intake Form" may be used in place of an original offense report, if it is thorough and complete;
  - d. copy of the criminal history [TCIC/NCIC];
  - e. Temporary Commitment;
  - f. "DA Intake Form"
  - g. CJIS Forms; and,
  - h. Magistrate's Warning, completed through line # (1).

### **PEACE OFFICERS AUTHORIZED TO ADMINISTER OATH**

*Texas Government Code, sec. 602.002*, allows peace officers described by *Art. 2.12, Code of Criminal Procedure*, to administer oaths when engaged in the performance of the officer's duties and the administration of the oath relates to the officer's duties. Therefore, it is permissible for a peace officer to administer the oath to an affiant in a probable cause affidavit and sworn statement.

### **ORIGINAL COMPLAINT**

Arresting agencies shall file the sworn complaint with the Justice of the Peace that has jurisdiction over the case. Tendering the above noted paperwork to the County Jail does not constitute the filing of the charge, which must be done with the Justice of the Peace who has geographical jurisdiction over the offense.

**NOTE: The actual determination of indigency and the appointment of counsel will be made by a District or County Court-at-Law Judge in accordance with Sections III and XII**

**IMPORTANT: In addition to the standard paperwork required by the Sheriff and District Attorney, No prisoner will be accepted at the Galveston County Jail without the completed "STATUTORY WARNING BY MAGISTRATE" form; a signed "PEACE OFFICER'S REQUEST FOR PROBABLE CAUSE FINDING"; a "SWORN PROBABLE CAUSE AFFIDAVIT"; and, FORM #GC-4 signed by the defendant indicating the defendant is "REQUESTING OR WAIVING APPOINTED COUNSEL."**

## **II.**

### **GALVESTON COUNTY SHERIFF'S RESPONSIBILITY**

The Sheriff of Galveston County, with the aid of the Office of Justice Administration shall, daily, identify those individuals who have been booked into the Galveston County Jail during the last twenty-four (24) hours for any misdemeanor or

felony offense and shall make that information immediately available to the District Attorney's Office.

The Sheriff shall cause incarcerated individuals to be taken each day before the duly assigned Magistrate for all felonies and misdemeanors, including weekends and official County holidays. The Sheriff shall cause those incarcerated individuals to be delivered to the proper assigned court or Magistrate as soon as possible, not later than forty-eight (48) hours. However, persons arrested for a misdemeanor charge without a warrant must be released on bond in an amount not to exceed \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time.

### **III. MAGISTRATE RESPONSIBILITIES**

For those individuals charged with a Felony offense, the District Judges of Galveston County who preside over criminal cases, on a rotating basis and by assignment of the Local Administrative Judge for the District Courts of Galveston County, or a qualified approved Magistrate, shall perform the duties of a magistrate by holding a magistrate's hearing every regularly scheduled work day, and on official County holidays and weekends, in the Galveston County Jail.

The County Court at Law Judges of Galveston County, on a rotating basis and by assignment from the Local Administrative Judge for the County Courts at Law of Galveston County, or a qualified Magistrate approved by the County, shall perform the duties of a magistrate by holding magistrate's hearings every regularly scheduled work day (including official County holidays and weekends) in the Galveston County Jail.

At the magistrate's hearing the responsible Magistrate shall perform the following duties:

1. inform accused of the offense for which the accused has been arrested;
2. make a probable cause determination; {Form # GC-2}
3. admonish the accused of the statutory warning as provided by law;
4. make a record that the accused was given magistrates' and statutory warnings and informed of the accused's right to a court appointed attorney if indigent, by signing the magistrate warning form; {Form #GC-3}
5. make inquiry as to whether the accused is requesting a court appointed attorney; {Form #GC-4}
6. provide the accused with an affidavit of indigency form and reasonable assistance in completing the form; {Form #GC-5}
7. transmit the "Affidavit of Indigency/Pauper's Oath" to the clerk; {Form #GC-5}
8. transmit or cause to be delivered immediately, but no later than 24 hours, the request for appointment of attorney, probable cause finding, indigency application and finding of indigency to the Indigent Defense Coordinator for delivery to the appropriate clerk for filing; {Form #GC-6}
9. set the Bond; {Form #GC-2 or #GC-3}

10. for individuals arrested on out-of-county warrants, the magistrate will ask the accused if the accused would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the accused with the appropriate forms for requesting counsel and reasonable assistance in completing the form. The forms will be transmitted by the Coordinator to the appointing authority in the county issuing the warrant within 24 hours of the request being made;
11. If the accused does not understand the English language, the Magistrate will grant reasonable assistance with the above requirements numbered 1 through 10 in a language that the accused understands.

**IV.**  
**PROCEDURES AND FINANCIAL STANDARDS**  
**FOR DETERMINING INDIGENCY STATUS**

The assigned judge of the District or County Courts at Law shall review the information and follow the procedures to determine whether a defendant is indigent, as follows:

1. *Definitions.* As used in this rule:

(a) "Net household income," means all income of the defendant and spousal income actually available to the defendant. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the defendant has no income or lesser income.

(b) "Non-exempt assets and property," means cash in hand, stocks and bonds, accounts at financial institutions, and equity in real or personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

(c) "Household," means all individuals who are actually dependent on the defendant for financial support.

(d) "The cost of obtaining competent private legal representation" includes the reasonable cost for support services, such as investigators and expert witnesses, as necessary and appropriate given the nature of the case.

2. *Financial Standards for Determining Indigence.* The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county.

(a) A defendant is considered indigent if:

(1) the defendant's net household income does not exceed 125% of the Poverty Guidelines as established and revised bi-annually by the United States Department of Health and Human Services and published in the Federal Register; and,

(2) the value of the non-exempt assets and property owned by the defendant:

(i) does not exceed \$2,500.00;

(ii) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(iii) does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.

(b) A defendant is considered indigent if, at the time of requesting appointed counsel, the defendant or the defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

(c) A defendant is considered indigent if the defendant:

(1) is currently serving a sentence in a correctional institution, is currently held in custody, is currently residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental health facility is sought; and,

(2) has no non-exempt assets or property in excess of the amounts specified in paragraph 2 above.

(d) A defendant who does not meet any of the financial standards above shall nevertheless be determined indigent if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents, taking into account the nature of the criminal charge, the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the defendant and the defendant's dependents.

### *3. Appointing Counsel for Partially Indigent Defendants*

(a) A defendant shall be considered partially indigent if the defendant does not meet any of the standards for indigence set forth in paragraph 2 above and:

(1) The defendant's net household income is greater than 125% but does not exceed 175% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and

(2) The value of the non-exempt assets and property owned by the defendant:

(i) does not exceed \$2,500.00;

(ii) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(iii) does not exceed double the estimated cost of obtaining private legal representation on the offense with which the defendant is charged.

(b) A defendant determined to be partially indigent shall be eligible for appointment of counsel only upon payment to the county of an appointment fee of \$100 if charged with one or more misdemeanors or \$200 if charged with one or more felonies. If a defendant determined to be partially indigent pleads or is found guilty, the court may order the defendant to comply with a payment schedule to reimburse the county for all indigent defense costs in the case.

### *4. Factors Not to be Considered*

(a) A defendant's posting of bail or ability to post bail may not be considered in determining whether the defendant is indigent or partially indigent. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in this rule.

(b) The resources available to friends of the defendant may not be considered in determining whether the defendant is indigent. Only the defendant's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

### *5. Procedures for Determining Indigence*



- (a) As soon as possible following arrest, but in no event not later than the magistrate hearing, the Magistrate shall provide any person who wishes to request appointment of counsel, a form the person will complete, under oath, providing the required information about the person's financial resources. The Magistrate will indicate that the person requests appointment of counsel. The Magistrate shall provide the arrested person reasonable assistance in completing the form;
- (b) The Magistrate shall transmit the completed form to the appropriate judge or person designated by the judges to appoint counsel;
- (c) The appointing judge or the person designated by the judge to appoint counsel will determine if the person meets the financial standards for indigence in paragraph 2 above. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case;
- (d) The arrested person may be required by the appointing judge, or the judge presiding over the case, to respond to the court's inquiry regarding the person's financial resources;
- (e) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigence or to impeach the direct testimony of the defendant regarding the defendant's indigence.
- (f) A defendant determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the defendant's financial circumstances occurs.
- (g) A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding based on evidence of a material change in the defendant's financial circumstances. A defendant's status as indigent or not indigent also may be reviewed in a formal hearing at any stage of a court proceeding based on additional information regarding financial circumstances. If a defendant previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the County in accordance with these Rules for time reasonably expended on the case;
- (h) Upon a determination of indigency, the appointing judge shall sign the form indicating the accused is indigent and shall immediately appoint an attorney pursuant to the approved attorney appointment list plan. The Magistrate is not authorized to appoint counsel and shall transmit or cause to be delivered immediately to the Indigent Defense Coordinator the request for appointment of lawyer form, finding of probable cause form, indigency application form, including finding of indigency. The Indigent Defense Coordinator shall deliver

the received information to the assigned misdemeanor or felony Judge no later than the next working day.

6. *Payment by Defendant.*

A court that finds that a criminal defendant has financial resources to offset, in part or in whole, the costs of legal services provided under this section may order the defendant to pay the County all or a portion of the costs of legal services provided that the Court finds that the defendant is able to pay. If a court places a defendant on probation or deferred adjudication, the court, as a condition of probation, may require repayment of all or a portion of the county's costs of providing legal representation if it does not impose a substantial financial hardship on the defendant or defendant's legal dependents.

V.  
**CRIMINAL COURTS BOARD**

The Criminal Courts Board is composed of the Judges of the 10<sup>th</sup>, 56<sup>th</sup>, 122<sup>nd</sup>, 212<sup>th</sup>, 306<sup>th</sup> and 405<sup>th</sup> District Courts and the Judges of County Courts at Law numbers 1, 2 and 3. The Board, by majority vote, will elect a chair and vice-chair who will assume that position on January 1, 2002 and serve a term of two (2) years. Thereafter, the Chair and Vice-Chair shall be elected, in January, for a term of two (2) years. The Chair shall preside at all Board meetings and hearings. The Vice-Chair shall preside in the Chair's absence. The Board may periodically adopt policies, procedures and guidelines to implement the Indigency Plan and guarantee effective representation to all indigent felony and Class A & B misdemeanor offenders. If any new District Court or County Court at Law with criminal jurisdiction shall be created, the Judge of the newly created court shall immediately become a member of the Criminal Courts Board.

The Criminal Courts Board shall meet at least once every two (2) months, but may meet more frequently, at the discretion of the Chair. The presence of five (5) Judges at a Board meeting constitutes a quorum and no vote on any matter may be taken if less than five (5) Judges are in attendance at a duly posted meeting. No motion or matter may be passed nor change implemented without a majority vote of the quorum in attendance at any duly posted meeting, except that any amendment to the Galveston County Plan must be approved by 2/3 or more of the Judges who are members of the Criminal Courts Board.

VI.  
**INDIGENT DEFENSE SERVICES COORDINATOR**

The Criminal Courts Board shall approve the selection and hiring of an Indigent Defense Services Coordinator (Coordinator). The Coordinator shall act under the immediate supervision of the Director of the Office of Justice Administration for Galveston County, or other position as designated by the Board.

The duties of the Coordinator shall include, but not be limited to:

1. maintaining and updating the list of qualified attorneys;
2. investigating and monitoring attorney qualifications;
3. managing Magistrate hearing procedures;
4. ensuring that the Criminal Courts follow the Plan for appointing attorneys as set out herein;
5. maintaining the rotation schedule of appointed attorneys;
6. coordinating with the Office of Court Administration, or other office as designated by the Board;
7. notifying the Local Administrative District Court Judge and Local Administrative County Court at Law Judge of any non-compliance with the policies and standards of the Task Force on Indigent Defense;
8. assisting in the County Reporting Plan and the obtaining of Technical Report Grants from the State of Texas, and;
9. processing complaints about court appointed attorneys; and,
10. performing other duties designated by the Board.

#### **VII. REQUIREMENTS FOR CONSIDERATION OF APPOINTMENT BY CRIMINAL COURT**

An attorney must submit a completed application to the Indigent Defense Services Coordinator to be considered for court appointments.

Application forms were mailed to all members of the Galveston County Bar Association prior to November 03, 2001. Notices were prominently posted outside all criminal courtrooms in the Galveston County Courthouse informing interested attorneys to pick up an application form from the Office of Justice Administration/Law Library.

Any attorney who, during a calendar year, desires to participate as an appointed attorney for indigent defendants may secure an application from the Office of Justice Administration and must complete and return the application to the Office of Justice Administration. The Indigent Defense Coordinator shall present the application to the Criminal Courts Board at their next scheduled meeting. If the application is approved by a majority vote of Judges in attendance at the meeting, the Coordinator shall add the attorney to the approved appointed list for the level of cases for which the Board has authorized.

An attorney who is on the approved list for appointment of counsel for indigent defendants and believes is eligible to be appointed to higher grade offenses may submit an application to the Indigent Defense Coordinator seeking a re-evaluation of appointment. The Coordinator shall present the application to the Criminal Courts Board at their next scheduled meeting. If the application is approved by a majority vote of Judges in attendance at the meeting, the Coordinator shall add the attorney to the approved appointed list for the level of cases for which the Board has authorized.

**VIII.**  
**QUALIFICATIONS FOR ATTORNEYS TO RECEIVE**  
**COURT APPOINTMENTS IN CRIMINAL CASES**

A. Basic Requirements For All Attorneys:

1. Qualified member of State Bar of Texas;
2. A person of good moral character;
3. An Attorney must either have a residence in Galveston County or have an office in Galveston County;
4. An attorney must have a secretary, receptionist, local area code-answering service, or a local area code-regularly monitored answering machine;
5. An attorney must have a functioning fax machine and an e-mail address, both available 24 hours a day;
6. Complete a minimum of ten (10) hours of certified C.L.E. credits annually in criminal law;
7. Attorneys shall submit by October 15<sup>th</sup> of each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in Galveston County for adult criminal cases for the prior twelve (12) months that begins October 1 and end September 30. Attorneys shall submit the report through the online form to the Texas Indigent Defense Commission. **The Board may remove from the list of approved attorneys, without further notice, any attorney who fails to submit the form by October 15 of each year as required herein.**

B. Rules on CLE Requirements:

Self-study hours will be not be considered in determining the minimum 10 hour per year requirement. Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirement for the initial year.

Continuing legal education activity completed during any reporting period in excess of the minimum 10 hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

Except those attorneys Board certified in criminal law by the Texas Board of Legal Specialization, attorneys shall certify completion of the required ten (10) hours to the Indigent Defense Coordinator on the date of original application and on or before the 1<sup>st</sup> day of December thereafter by filing a sworn annual certification form with the Office of Justice Administration. {Form #GC-7}

C. Capital Murder Where Death Penalty Is Sought by State:

Except in those cases where a legal conflict exists, the court shall appoint the West Texas Regional Public Defender for all death-eligible capital cases.

In cases where a legal conflict prohibits appointment to the West Texas Regional Public Defender, the following qualifications shall apply:

1<sup>st</sup> CHAIR:

1. On the approved list of attorneys qualified for capital murder appointment as maintained by the 2<sup>nd</sup> Administrative Judicial Region of the State of Texas.

2<sup>nd</sup> CHAIR:

1. At least five (05) years experience in criminal litigation and tried to verdict at least eight (08) felony cases before a jury for offenses punishable as 1<sup>st</sup> or 2<sup>nd</sup> degree felonies; or,
2. On the approved list of attorneys qualified for capital murder appointment as 2<sup>nd</sup> Chair as maintained by the 2<sup>nd</sup> Administrative Judicial Region of the State of Texas.

D. Capital Murder Where Death Penalty Is Not Sought by State of Texas:

1. Board certified in criminal law; or,
2. At least five (05) years experience in criminal litigation and tried to verdict at least eight (08) felony cases, excluding State Jail felonies.

E. First Degree Felonies:

1. Board certified in criminal law, who are therefore qualified to handle all 1st degree felonies and any lesser offenses for purposes of this plan; or,
2. Have at least four years prior experience in criminal litigation, and;
3. Tried to verdict at least five felony jury trials.

F. Second Degree Felonies:

1. Have at least three years' experience in criminal litigation; and,
2. Have prior experience in three or more felony jury trials as lead counsel.

G. Third Degree Felonies and State Jail Felonies:

1. Have at least one year prior experience in criminal litigation, and;
2. Have prior experience as lead counsel in at least three criminal jury trials, excluding Class C misdemeanors.

H. Misdemeanors – Individual Appointments:

1. Meet basic requirements for all attorneys; and,
2. Be familiar with the docket call procedures for County Courts at Law 1, 2 and 3.

I. Misdemeanors – Jail Docket Term Assignment:

1. Meet basic requirements for all attorneys, and;
2. Be familiar with the docket call procedures for County Courts at Law 1, 2 and 3, and;
3. Have two (2) years' experience in criminal law.

J. Appellate Appointments:

Capital Murder - Death Penalty

1. On the approved list of attorneys qualified for capital murder appellate appointments as maintained by the 2<sup>nd</sup> Administrative Judicial Region of the State of Texas.

Capital Murder - No Death Penalty

1. Board certified in criminal law, or;
2. Have personally authored at least five criminal appellate briefs.

First and Second Degree Felonies

1. Have minimum three years' experience in criminal litigation or criminal appellate practice and have authored at least two appellate briefs in criminal cases.

Third Degree Felonies, State Jail Felonies and Misdemeanors

1. Have minimum two years' experience in criminal litigation and have authored at least one brief filed in a criminal or juvenile case, or;

2. Otherwise deemed qualified by a majority vote of Judges with criminal jurisdiction in attendance at Board meeting.

## **IX.**

### **GRADUATED LISTS**

Attorneys who complete and submit an application for inclusion on the appointment list for representation of indigent defendants and who meet the basic requirements for attorneys shall be placed on a graduated list based on experience and qualifications as set out in Section VIII.

The Graduated List shall be as follows:

A. Death Penalty Cases

Appointment to capital murder cases in which the District Attorney is seeking death penalty. 1<sup>st</sup> Chair and 2<sup>nd</sup> Chair appointments shall be made from the approved list maintained by the 2<sup>nd</sup> Administrative Judicial Region of the State of Texas. The Judge appointing counsel to death penalty cases shall consider the appointed attorney's availability, experience and qualifications as set forth in Section VIII C.

B. Capital List - Non Death Penalty Cases

There will be no list compiled for appointment to capital murder cases in which the District Attorney does not seek the death penalty. Attorneys assigned to non-death penalty cases shall be made on a case by case basis without regard to rotation among attorneys. The Judge appointing counsel to non-death penalty cases shall consider the appointed attorney's availability, experience and qualifications as set forth in Section VIII C.

C. First Degree Cases

Attorneys approved for appointment to first degree felony cases may represent defendants charged with first degree felonies, or any lesser offense, including writs, criminal contempt and motions involving DNA matters.

D. Second Degree Cases

Attorneys approved for appointment to second degree felony cases may represent defendants charged with second degree felonies, or any lesser offense, including writs, criminal contempt and motions involving DNA matters.

E. Third Degree Cases

Attorneys on the third degree list may represent defendants charged with third degree felonies, State Jail felonies, motions to revoke probation and motions to adjudicate guilt, and any County Court at Law criminal matters, including writs, criminal contempt and motions involving DNA matters.

F. Misdemeanor Lists

Attorneys on the misdemeanor lists may represent defendants charged with Class A or Class B misdemeanors in the County Courts at Law of Galveston County.

G. Appeals - Capital Murder - Death Penalty

The Board does not maintain a list for appointments to appeals of those cases in which the jury imposed a death penalty. Judges shall make attorney appointments to these appeals on a case by case basis and judges shall consider the appointed attorney's availability, experience and qualifications as set forth in Section VIII C.

H. Appeals - Capital Murder - Non Death Penalty

Attorneys on this list may represent on appeal those defendants who are convicted of capital murder but the death penalty was not imposed. The Judge appointing counsel to these appeals shall consider the appointed attorney's availability, experience and qualifications as set forth in Section VIII C.

I. Appeals - First and Second Degree Felonies

Attorneys on the first and second degree appellate appointment list may represent defendants on appeal convicted of a first degree felony, or any lesser offense, including writs and criminal contempt.

J. Appeals - Third Degree Felonies, State Jail Felonies and Misdemeanors

Attorneys on the Third Degree Felonies, State Jail Felonies and Misdemeanors appellate appointment list may represent defendants convicted of third degree felonies, state jail felonies and any County Court at Law criminal matters, including writs and criminal contempt.



**X.**  
**COMPILATION OF MASTER LIST**  
**WHICH INCLUDES GRADUATED LIST**

Between December 3, 2001 and January 1, 2002, the Board, by majority vote, determined the placement of attorneys on the Master List, including the Graduated List.

In order for an attorney to be added to the Master List, a majority of the Board must agree that the attorney meets all criteria for placement on the appropriate level of the graduated list.

If one or more Judges abstain from a vote, the Board shall deem the attorney "approved" if a majority of the Judges who did not abstain approve the application.

Attorneys are required to notify the Indigent Defense Coordinator within ten (10) days of any material changes to the attorney's information and/or qualifications.

Any attorney seeking to move up to a different graduated classification shall be governed by the procedures set forth in Section VII.

**XI.**  
**REMOVAL OF ATTORNEYS FROM THE MASTER LIST**

**Annual Review**

The Criminal Courts Board will conduct an annual performance review of all attorneys on the Master List on or before March 1<sup>st</sup> of each year. The performance review may include, but is not limited to: initial contact and communication with client; maintenance of communication tools (current fax, phone and mailing address); knowledge and application of the law; proper trial procedures; ability of the attorney to effectively represent the indigent defendant before a Judge or jury; appearance at court hearings, and claim vouchers presented for payment.

A majority of the judges who preside over cases at the level to which the attorney is assigned shall determine if the attorney will remain on the Master List at the same level; remain on the Master List at a lower level, or; be removed from the Master List.

**Grounds for removal from the Master List**

An attorney may be removed from the Master List and from any case to which the attorney has been appointed for any of the following reasons:

- (1) the attorney is convicted or receives deferred adjudication for any felony, including controlled substance offenses;

- (2) the attorney is convicted or receives deferred adjudication for any crime of moral turpitude;
- (3) the attorney is under indictment, information, criminal complaint or other formal charge for a felony or crime of moral turpitude;
- (4) the attorney intentionally misrepresents any information on an Application for Indigent Representation, on any Attorney Fee Voucher, or on any Annual Certification of Attorney;
- (5) the attorney fails to meet any of the general qualifications;
- (6) the attorney is sanctioned by the State Bar of Texas;
- (7) the attorney fails to file with the Annual Certification of Attorney;
- (8) the attorney fails to perform in a professional or ethical manner, including the submission of claims for legal services not performed by the attorney; or,
- (9) for good cause at the discretion of a majority vote of the Criminal Courts Board.

### **Complaints and Reinstatement**

The Coordinator shall forward to the Board copies of any written charges, complaints or concerns, regarding an attorney on the Galveston Appointment list. Such written charges, complains, or concerns must be signed by the complaining person. The Board shall schedule a hearing to address the complaint. The Board shall conduct the hearing in executive session unless the attorney submits a written request for a public hearing.

The Coordinator shall notify the attorney, in writing, of the Board meeting and shall provide the attorney copies of the written and signed complaint. The attorney may respond to the complaint by providing a written, signed response to the Board, by appearing in person at the Board meeting to address the Board, or both.

After considering the complaint and the attorney's response, if any, the Board shall by a majority vote determine if the attorney will:

- 1. remain on the Master List at the same level;
- 2. remain on the Master List at a lower level;
- 3. be suspended from the Master List for a time period determined by the Board;

4. be removed from Master List; and/or
5. be required to undertake other remedial measures, including but not limited to, additional legal training.

If the Board removes an attorney from the Master List, or reduces the level of cases the attorney may represent on the Master List, the attorney may, after the expiration of 180 days of the Board's decision, apply for reinstatement to the Master List or apply to increase the level of cases.

## **XII.**

### **PROCEDURE FOR ATTORNEY ASSIGNMENT**

#### **A. In Custody**

**Galveston County Jail** - If a defendant is in jail on criminal charges pending in Galveston County, the Judge of the District Court or County Court at Law shall appoint an attorney not later than the end of the first working day after the Court receives the request for appointed counsel.

If an indigent defendant is jail based on another county's warrant, a District or County Court at Law Judge will appoint legal counsel for the defendant if, on the eleventh day after the arrest, the defendant is still in the custody of Galveston County. The Indigent Defense Coordinator shall deliver a completed pauper's oath and request for counsel to the jail docket duty Judge with jail docket duty or to the appropriate local administrative judge. Only a District Court Judge or County Court at Law Judge shall appoint counsel.

**Out-of-County Jail** – If an indigent defendant is arrested in another county based on a Galveston County warrant, a Galveston District Court Judge or County Court at Law Judge shall, upon receipt of the request for counsel, make a determination of indigence and, if the defendant is found to indigent, appoint counsel within one working day after the request is received.

#### **B. Released on Bond**

If a defendant is not in custody, a District Court Judge or County Court at Law Judge must appoint counsel at the eligible defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first. If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at <http://tide.tamu.edu/public.net>, the County of Galveston website at <http://www.galvestoncountytexas.gov/ja/Pages/Indigent-Defense> {Form #GC-13} or from the District or County Clerks of Galveston County. The defendant may submit these forms to the Office of Justice Administration at 600 – 59<sup>th</sup> Street, Galveston, Texas 77551.

**C. Out of County Warrants**

If an indigent defendant is arrested on a warrant issued in a county other than the county in which the arrest was made and the defendant has not been transferred or released into the custody of the county issuing the warrant before the 11<sup>th</sup> day after the date of the arrest and if counsel has not otherwise been appointed by the arresting county under Article 1.51 C, the District Court Judge or County Court at Law Judge with jail docket duty shall immediately appoint a qualified attorney to represent the defendant in any matter under Chapter 11 or 17, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county.

The court may not direct or encourage the defendant to communicate with the attorneys representing the State until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.

**D. Case Appointments**

1. District Courts

a. Individual Case Appointment

When an indigent defendant appears before a District Judge and requests appointment of an attorney, or when the District Judge receives a request for appointment of an attorney from a defendant who has been determined by the Judge or a Magistrate to be indigent, the Judge shall immediately appoint an attorney from the Master List whose placement on the Graduated List qualifies that attorney to represent the defendant for which the defendant is currently charged.

The District Judge shall appoint an attorney from the first five names on the Master List of those qualified to represent defendants at the level of offense involved. An attorney may not be bypassed for appointment more than two times unless the District Judge finds, in writing, that a conflict of interest exists or that good cause exists for bypassing the attorney.

b. Limited Term Assignment

A District Court Judge who has been assigned jail docket duty for consecutive two or three week periods shall appoint one attorney from the Master List for a period not to exceed one week. The appointed attorney shall appear daily during the regularly scheduled jail docket to provide representation for indigent defendants who request appointment of

counsel. The attorney appointed for the one week term shall be qualified and approved to the 1<sup>st</sup> Degree Felonies List. The appointing Judge shall appoint the attorneys for the week from within the first five names on the Master List and Graduated List with the understanding that the attorney appointed for the week must come from within the first five names up on the 1<sup>st</sup> Degree Felonies List. The same attorney may not participate as a jail docket attorney for felony cases more than once during a three month period in any District Court of Galveston County.

Attorneys scheduled for jail docket provide representation for indigent defendants during the limited term assignment and are listed as the attorney of record if the case is resolved during the limited term assignment. If the case is not resolved during the limited term assignment, the clerk shall notify the court in which the case is filed and the presiding judge shall make the appointment of counsel.

## 2. County Courts at Law

### a. Individual Case Appointment

When an indigent defendant appears before a County Court at Law Judge and requests appointment of an attorney, or when the County Court at Law Judge receives a request for appointment of an attorney from a defendant who has been determined by the Judge or a Magistrate to be indigent, the Judge shall immediately appoint an attorney from the Master List whose placement on the Graduated List qualifies that attorney to represent the defendant for which the defendant is currently charged.

The County Court at Law Judge shall appoint an attorney from the first five names on the Master List of those qualified to represent defendants at the level of offense involved. An attorney may not be bypassed for appointment more than two times unless the County Court at Law Judge finds, in writing, that a conflict of interest exists or that good cause exists for bypassing the attorney.

### b. Limited Term Assignment

A County Court at Law Judge who has been assigned jail docket duty for a one week period shall appoint two attorneys from the Master List for a period not to exceed one week. The appointed attorney shall appear daily during the regularly scheduled jail docket to provide representation for indigent defendants who request appointment of counsel.

The County Court at Law Judge shall appoint attorneys qualified and approved on the misdemeanor lists. The County Court at Law Judge shall appoint the attorneys for the week from within the first five names on the

Master List and Graduated List with the understanding that the attorney appointed for the week must come from within the first five names on the appointment list.

The same attorney may not participate as a jail docket attorney for misdemeanor cases more than once during a three month period. Except where otherwise provided for in Section XII C of this Plan, the attorney representing the defendant at jail docket is appointed to represent the defendant in the pending criminal matter until final resolution of the case.

#### **E. Judicial Economy**

If an attorney is previously appointed to represent an indigent defendant on a pending, unresolved case and the indigent defendant is subsequently charged with any new offense or offenses, the appointing District Judge or County Court at Law Judge may appoint the same attorney previously appointed to represent that indigent defendant instead of appointing an attorney from the Master List. However, if the new charge or charges against the indigent defendant are of a higher grade or level and the previously appointed attorney is not qualified to handle the higher level of offense charged, then new qualified counsel shall be appointed from the Master List represent the indigent defendant on all charges pending against the defendant. If an attorney is withdrawn because of this provision before the 1<sup>st</sup> setting, the attorney may submit a voucher in an amount not to exceed \$66.00 in misdemeanor cases and felony 2<sup>nd</sup> degree or lesser cases, and \$76.00 in felony 1<sup>st</sup> degree cases.

#### **F. Replacement of Appointed Counsel**

##### **1. Attorney Request**

A lawyer may be relieved from an appointment upon satisfying the judge that the lawyer has good cause for being relieved and that the client will not be prejudiced.

##### **2. Judicial Determination**

The judge presiding over a criminal case may replace appointed counsel after entering written findings in the record showing good cause for the replacement and no prejudice to the defendant, including, without limitation:

(a) Current information about the defendant and charges indicates that counsel of different qualifications is appropriate for the defendant under these rules; or

(b) Replacement of appointed counsel in a death penalty case is required under Article 26.052(e) of the Code of Criminal Procedure.

3. Defendant Request

The judge presiding over the trial court proceedings in a criminal case may replace appointed counsel at the defendant's request if:

The defendant requests an attorney other than trial defense counsel for appeal or post- conviction *habeas corpus* proceedings; or

The defendant shows good cause for replacing appointed counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

4. Appointing Replacement Counsel

Whenever appointed counsel is replaced under this Rule, replacement counsel immediately shall be selected and appointed in accordance with the procedures described in accordance with Section XII, "Procedure for Attorney Assignment."

**XIII.**  
**LIST UPDATE**

Each year, the Criminal Courts Board shall update and modify the list of eligible court appointed attorneys consistent with the provisions of this Plan, and shall post the updated list outside the Galveston County District Clerk's Office and outside the Galveston County Clerk's Office no later than December 31<sup>st</sup> of each year.

**XIV.**  
**RESPONSIBILITIES OF COURT APPOINTED ATTORNEYS**

Court appointed attorneys shall make every reasonable effort to contact the indigent defendant not later than the end of the first working day after notification of appointment is received and to interview the defendant as soon as practicable. Except for good cause shown to the Judge presiding over the case, the interview must be within fifteen (15) days of the date of the appointment. The failure of an attorney to comply with this requirement shall be grounds for the judge to deny, or significantly reduce, any compensation claimed by the attorney for services rendered.

Except when appointed on an out-of-county warrant, a court appointed attorney shall represent a defendant until the case is resolved, including all appeals; or, until the Court, after entering written finding of good cause, relieves the attorney.

Attorneys appointed by a Galveston County District Judge or Galveston County Court at Law Judge to represent an indigent defendant on an out-of-county warrant shall

represent the defendant in the pending criminal matter until the charging county appoints counsel, or the defendant is released or transferred from the Galveston County Jail.

Attorneys shall promptly notify the Justice Administration's Office in writing of any matter that may disqualify the attorney by law, regulation, rule, or under this Plan from receiving appointments to represent indigent defendants.

Attorneys shall timely appear and represent each appointed client at each and every court date scheduled by the court. The only exceptions for a designated substitute attorney to appear for the appointed attorney will be if the court and defendant has previously approved a substitute attorney appearing for a docket call or the entry of a plea agreement.

#### **XV. FEE SCHEDULE**

The appointing Court shall pay the appointed attorney a reasonable fee in accordance with a uniform schedule of fees as adopted by the majority of Judges and attached hereto as Exhibit #1.

The uniform schedule of fees shall take into consideration reasonable and necessary overhead costs, the availability of qualified attorneys, time and labor expenses, complexity of the case, and the experience and ability of counsel.

An attorney working under a limited term assignment shall only be paid for work actually performed and according to a uniform schedule of payment for limited term appointments as adopted by a majority of Judges and attached hereto as Exhibit #1.

#### **XVI. APPOINTMENT OF INVESTIGATORS AND EXPERTS FOR INDIGENT DEFENSE**

Appointment and reimbursement for reasonable and necessary investigation, mental health and other experts shall be as provided by law and only upon written motion and prior approval by the trial court Judge for such appointment and anticipated reimbursement. (See XVI – REQUEST FOR PAYMENT OF ATTORNEY'S FEES AND EXPENSES)

#### **XVII. REQUEST FOR PAYMENT OF ATTORNEY'S FEES AND EXPENSES**

Each attorney shall present a signed voucher or claim for attorney fees and expenses using the approved form(s) attached as {Form #GC-8} and {Form #GC-12}. The claim form shall include a statement of the nature of the charge, the services performed, the dates of such performance, the actual time spent on each date and the amount requested for payment of attorney's fees and expenses.



The signed claim form for attorney fees shall be submitted to the trial Judge as follows:

- A. Not later than ten (10) days after disposition of a case by modification of probation, or dismissal;
- B. Not later than ten (10) days after disposition of a case by plea, except in those cases where a plea is set on the docket with advance notice. In cases where a plea has been set on the docket in advance of the plea, the claim form for attorney fees is due at the time of plea;
- C. Not later than ten (10) days after disposition of a case by bench trial, including motions to revoke probation, except if a motion for new trial or rehearing is timely filed, then no later than the next working day after the motion for new trial or rehearing is ruled upon, if denied or overruled;
- D. Not later than ten (10) days of the date a verdict in a jury trial is received and accepted by the Court, or; if a motion for new trial is timely filed, no later than the next working day after the motion for new trial is ruled upon, if denied or overruled.
- E. Appeals - Attorneys may submit a claim form after the appeal brief has been filed by the court of appeals, but, shall in no event submit a claim form later than ten (10) days after the appellate court issues the mandate.

Vouchers for indigent attorney fees not timely submitted will be considered waived, the services performed Pro Bono, and the request for attorney's fees denied.

If the trial Judge disapproves the requested amount of payment, the Judge shall make written findings stating the amount of payment approved and the reasons for approving an amount different from the requested amount. The attorney whose request for payment has been disapproved or reduced may, by written motion, file an appeal with the Presiding Judge of the 2<sup>nd</sup> Administrative Region.

The signed claim form for Investigator and Experts shall be submitted by the Provider on the form titled CLAIM FOR INVESTIGATION OR EXPERT WITNESS FEES (#GC-12) provided by the County. Investigators/Experts should submit a claim directly to the Indigent Defense Coordinator. Judges shall not approve and the County shall not reimburse such expenses to the attorney or other third party. The County shall make all payments only to the Provider of the services.

An inexperienced attorney who desires to gain experience in criminal matters in order to be placed on the appointment list or to advance on the Graduated List may petition the District Court Judge or County Court at Law Judge to allow the attorney to sit as second chair on a felony or misdemeanor trial. Upon approval of by the District Court Judge or County Court at Law Judge, the attorney may participate in the trial as a second chair attorney; however, the attorney will not be compensated by the Court and will perform any legal services as second chair on a Pro Bono basis.

**XVIII.**  
**LOCAL ADMINISTRATIVE JUDGE'S**  
**REPORTING COMPLIANCE**

The above set out standing rules and order was adopted by unanimous vote of the below-signed Judges and is effective beginning November 01, 2016.

ORDERED this the 20<sup>th</sup> day of October 2016.

Kerry Neves  
Judge Kerry Neves  
10<sup>th</sup> District Court

10<sup>th</sup> District Court

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Louis Y

## Judge Lonnie Cox

56<sup>th</sup> District Court


Local Administrative District Court Judge

Judge Patricia Grady  
212th District Court

Judge Anne Darring  
306th District Court

**Judge Anne Darring**

306th District Court

  
Judge John Ellisor  
122<sup>nd</sup> District Court

Judge John Ellison

122<sup>nd</sup> District Court



Judge John H. Grady  
County Court at Law No. 1

County Court at Law No. 1


Barbara E Roberts  
Barbara E. Roberts

Barbara E. Roberts

County Court at Law No. 2

Local Administrative County Court At Law Judge

Judge Michelle Slaughter  
405th District Court

  
Judge Jack Ewing  
County Court at Law No. 3

Judge Jack Ewing  
County Court at Law No. 3

County Court at Law No. 3

{FORM #GC-0}

FILED  
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DALLAS, TEXAS